

EXHIBIT "J"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

ROMAC ENVIRONMENTAL
SERVICES, LLC

NO.: 6:20-cv-00581-RRS-CBW (LEAD)
CONSOLIDATED WITH
NO.: 6:20-cv-01672 (MEMBER)
NO.: 6:20-cv-00588 (MEMBER)

VERSUS

WILDCAT FLUIDS,
LLC,

JUDGE ROBERT R. SUMMERHAYS
MAGISTRATE JUDGE CAROL B.
WHITEHURST

* * * * *

The deposition of Keith Wingate taken in
the above-entitled cause, before Connie S. Ezell,
Certified Court Reporter, at the office of Jones
Walker LLP, 600 Jefferson Street, Suite 1600,
Lafayette, Louisiana, on August 5, 2021, commencing
at 9:01 a.m.

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ALSO PRESENT: MR. ALAN BROWN

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S T I P U L A T I O N

It is stipulated and agreed by and between counsel for the parties hereto that the deposition of the aforementioned witness is hereby being taken for all purposes allowed under Federal Rules of Civil Procedure, in accordance with law, pursuant to notice;

That the formalities of reading and signing are specifically waived;

That the formalities of filing, sealing and certification are specifically waived;

That all objections, save those as to the form of the question and the responsiveness of the answer, are hereby reserved until such time as this deposition, or any part thereof, may be used or sought to be used in evidence.

* * *

CONNIE S. EZELL, Certified Shorthand Reporter in and for the State of Louisiana, officiated in administering the oath to the witness.

1 answer --

2 THE WITNESS: Okay.

3 MR. NEUNER: -- or Connie has
4 a mean right hook. She's gonna --

5 THE WITNESS: No, I know her.
6 She's not --

7 MR. NEUNER: Just slow down
8 and --

9 THE WITNESS: Okay.

10 MR. NEUNER: Going fast won't
11 make it go faster.

12 THE WITNESS: Okay.

13 MR. NEUNER: Okay.

14 BY MR. JOSEPH:

15 Q. What business did Romac do with DEL before Wildcat
16 came into the picture?

17 A. We started doing with DEL probably about a year
18 before. We went to DEL to go ahead and manufacture
19 two pieces of equipment for us. One was called the
20 Kodiak and one was called the Beast. And basically
21 what it was for was cleaning drill waste. The Kodiak
22 was to go ahead and reclaim drill mud to give back to
23 the rig and drive the solids to reduce their trucking
24 cost, and the Beast was where we remediate everything
25 on site.

1 Q. Okay.

2 A. That's how we got started. Basically what we took is
3 Bob's Total Clean system that he had been using for
4 the dredging, the drying of spoils, and we took that
5 and modified it for the oilfield is what we did.

6 Q. Okay. And when you say we modified it, who modified
7 it? Who was involved in the modifications?

8 A. Well, it was predominantly us and DEL. We had some
9 ideas what we wanted, but Bob Kulbeth is the one who
10 came up with the design of everything. He took his
11 basic premise of what he had, and he took that -- and
12 what we said, we -- we need to have this done and this
13 done. This is the end results we need to have. And
14 so Bob took it upon himself to do those -- make it
15 work.

16 Q. Okay. If you could, tell me what those two thises
17 were.

18 A. Excuse me. Say that again.

19 Q. Sure. If you could, tell me -- you said we need to
20 have this done and this done. What were these two --

21 A. Well, like on the Beast, I had to have certain
22 retention time for the chemical to work, okay, so as
23 we receive the drill cuttings, the waste -- drill
24 waste, as we received it, I'd have the retention time
25 so the chemical I was using could break it all down,

1 Q. Yes, sir.

2 A. Okay. No.

3 Q. Did it separate oil from the water and the sand?

4 A. Yes, it did.

5 Q. Okay. So how did Wildcat and Romac and DEL become
6 involved with what became the SandCat?

7 A. I went to Bob in October of 2017, I think it is -- I
8 think it's 2017 -- September -- latter part of
9 September/October time frame, and I said, Bob, I said,
10 look, I said, I want to get into the -- the solids
11 business on the flow back, picking up their solids
12 with his trucking -- I'm sorry, drying their solids, I
13 apologize, drying their solids. And I said, couldn't
14 we use the same premise that we have now in the Beast
15 and the Kodiak to do that. Well, at the same time
16 Mike Kulbeth was on location with -- with Wildcat.
17 Okay? My understanding, it took some of Bob's shakers
18 and a few other things tied to a open top tank.
19 The -- they started processing through that to
20 demonstrate how dry we could get the -- the solids on
21 the back side of it to reduce their trucking cost.
22 Okay? So Bob told me about that. Mike came back. He
23 says, you need to call this guy right here and see
24 possibly what y'all can do to work together, and so I
25 went ahead and called Jeff Weber.

1 Q. So Mike Kulbeth was on location --

2 A. Uh-huh.

3 Q. -- with --

4 Is that a yes?

5 A. Yes.

6 Q. -- was on location with Jeff Weber and Wildcat --

7 A. Correct.

8 Q. -- performing services with a device that ultimately
9 became the SandCat?

10 A. I don't know if it ultimately became the SandCat,
11 because that piece of equipment -- all it was was open
12 top tank and two shakers and a gas buster on top of
13 it.

14 Q. Okay.

15 A. The SandCat's totally different from that, I mean,
16 so -- it's more intricate than that is. Okay?

17 MR. NEUNER: It's more --
18 it's more what?

19 MR. JOSEPH: Intricate?

20 THE WITNESS: Yeah,
21 intricate -- yeah.

22 MR. NEUNER: Okay.

23 THE WITNESS: Thank you,
24 yeah.

25 BY MR. JOSEPH:

1 Q. Well, how did Mike Kulbeth and Wildcat get together,
2 if you know?

3 A. I have no idea.

4 Q. Okay. How long had Mike Kulbeth and DEL been working
5 with Wildcat before you said I need a device that --

6 A. I have -- I have no idea. I don't -- I don't know.
7 I'm sorry.

8 Q. I normally go through a bunch of housecleaning
9 measures very -- at the very beginning.

10 A. Okay.

11 Q. Have you ever given a depo before?

12 A. No.

13 Q. Okay. If we talk at the same time -- you can see our
14 court reporter's writing everything down.

15 A. Right.

16 Q. If we talk at the same time --

17 A. I apologize.

18 Q. -- like that --

19 MR. NEUNER: See, you just
20 did it --

21 THE WITNESS: Yeah, I know.

22 BY MR. JOSEPH:

23 Q. -- then it makes it hard, and uh-huhs and huh-uhs and
24 um-hums don't come out too well either --

25 A. Okay.

1 Q. -- so you have to say yes or no.

2 A. All right.

3 Q. And I'm terrible about interrupting too, but I will
4 try to let you finish your answer if you let me finish
5 my question. Okay?

6 A. Okay.

7 Q. All right.

8 MR. NEUNER: And I'll try and
9 be the referee.

10 THE WITNESS: Okay.

11 MR. NEUNER: Just take your
12 time. We have all day.

13 BY MR. JOSEPH:

14 Q. What -- if you know, what was DEL and Romac working
15 on?

16 A. I don't understand the question.

17 Q. I'm sorry. It was a bad question. What was DEL and
18 Wildcat working on that Mike Kulbeth was out there at
19 the site?

20 A. I don't know. I don't know. All I know is is that
21 when I went talk to Bob about it, he told me they were
22 on the site with Jeff Weber -- he didn't even say --
23 he didn't mention Jeff's name at the time, he just
24 said with a -- with a customer, you know, running a
25 test using his shakers to prove see -- to prove how

1 dry we could get the cuttings --

2 Q. Okay --

3 A. -- the solids.

4 Q. -- but the device that was being tested also had a gas
5 buster, right?

6 A. Yes. I think it was -- I think the gas buster
7 belonged to Jeff Weber. It was his gas buster.

8 Q. And this is what -- is -- is this device that Mike was
9 out watching operate what you went to Bob and said,
10 hey, I need a device that does this or is it a
11 different device?

12 A. Repeat your question one more time please.

13 Q. Sure. You went to Bob Kulbeth and said I need
14 something --

15 A. Uh-huh.

16 Q. -- that can do X, Y and Z?

17 A. Yes.

18 Q. Let's see if we can modify the Kodiak and the Beast to
19 perform X, Y and Z. Is that fair?

20 A. That's fair.

21 Q. Okay. Was the device that Wildcat was operating and
22 Mike Kulbeth was watching a device that performed the
23 X, Y and Z that you wanted to have?

24 A. Yes and no.

25 Q. Okay.

1 A. Yes to the point where they got the cuttings dry.
2 Okay? No is where -- okay, there was no device on
3 there how to skim the oil at the time for the
4 application, and also too it had no really holding
5 capacity in the tank they used. It needed more
6 holding capacity and process time, so that was part of
7 the changes that had to be made going forward off
8 that -- that test they did.

9 Q. Okay. Do you know if that job that Mike Kulbeth was
10 on was a job for Carrizo Oil & Gas?

11 A. I think so. I'm not sure. I think it was Carrizo Oil
12 & Gas. I'm not really sure.

13 Q. And did the device that Wildcat was operating out
14 there separate water, solids, oil and gas?

15 A. I'm not sure. All I know is that what I was aware of
16 was is the solids side of it. My main concern was to
17 reduce trucking cost, what we did with the Kodiak and
18 the Beast. That was my main concern, because trucking
19 cost was a huge cost for operators out there with
20 limited amount of trucks available to them, so that
21 was my main -- main focus.

22 Q. Okay. So you weren't really interested that much in
23 fracking water, correct?

24 A. No.

25 Q. Okay. At some point, you -- when I say you, I'm

1 Q. Okay. Did you make any technical contributions to
2 what became the SandCat?

3 A. No.

4 Q. Did Alan Brown make any technical contributions to
5 what became the SandCat?

6 A. I have no idea.

7 Q. How about -- did Jeff Weber make any technical
8 contributions to what became the SandCat?

9 A. I assume so.

10 Q. Okay. Are you on any patents with DEL?

11 A. No.

12 Q. Going -- okay. Do you have any patents?

13 A. No.

14 Q. Does Romac have any patents?

15 A. Not that I'm aware of.

16 Q. If you could, explain to me what your understanding is
17 of the concept that DEL and Romac and Wildcat were
18 going to try to effectuate and put in place. It's my
19 understanding that DEL was going to manufacture, Romac
20 was going to finance and Wildcat was going to market.
21 Is that anywhere close?

22 A. No --

23 Q. Okay.

24 A. -- no, it's not.

25 Q. Please tell me.

1 A. My main thought at the time and also talking to Bob
2 and Alan and Jeff was at that time Jeff was pretty
3 well financially hamstrung, you know. He didn't have
4 much capital at the time. Okay? We needed an in to
5 other customers, so my basic thought was we would go
6 ahead and build this piece of equipment, lease it to
7 Wildcat at a favorable price or do a lease/purchase or
8 even -- or a sale price to them, okay, to where they
9 could get the unit out to his customer base so we
10 could use it as a test to prove to other customers --
11 their -- other competition in that field, okay --

12 Q. Let me hop in. You're saying Romac was going to
13 finance the manufacture of this device that Wildcat
14 was going to use --

15 A. Uh-huh.

16 Q. -- because you wanted an in road to the customer?

17 MR. NEUNER: Objection to the
18 form of the question.

19 MR. JOSEPH: I'm not trying
20 to mischaracterize it. I'm just trying
21 to understand. That's okay.

22 MR. NEUNER: Yeah, the
23 word -- if you want to know what -- the
24 word that bothers me is finance. They
25 were going to pay for it.

1 THE WITNESS: Pay for it.

2 MR. NEUNER: They weren't
3 going to finance it, they were going to
4 pay for it.

5 BY MR. JOSEPH:

6 Q. You were going to pay to have it manufactured?

7 A. Correct.

8 Q. Okay. And then rent it to Wildcat?

9 A. Correct.

10 Q. And they were going to go perform services for their
11 customers?

12 A. Correct.

13 Q. And that would get your foot in the door for the
14 customers?

15 A. Right, correct -- not for much for the SandCat, for
16 the Beast --

17 Q. Right.

18 A. -- and the Kodiak, because they way I priced it to
19 those guys -- I told them, we'll also pay you a
20 percentage of the daily rates of the Kodiak and the
21 Beast when it's used on one of your customers' sites.
22 As long as it's out there, you will get financial
23 reward for that unit. That was my end goal --

24 Q. Okay.

25 A. -- you know, a win win for everybody. So they was

1 that this piece of equipment could be used for flow
2 back.

3 Q. Do you know if Wildcat had ever been out to DEL's
4 facility to look at their equipment?

5 A. I have no idea.

6 Q. Do you know if DEL had ever been to Wildcat's facility
7 to look at their equipment?

8 A. Other than when Mike was on location, I don't know.

9 Q. And on location is that job in October of --

10 A. October, November -- I think it was the November time
11 frame.

12 Q. -- '17?

13 A. Yeah, it was November, because I left the day after
14 Thanksgiving to go down there.

15 Q. Okay. Then on the first page at the bottom Jeff is
16 responding to you, and he has some modifications and
17 he mentions that was the problem last time. What's he
18 talking about there, the problem last name?

19 A. I don't know. I don't know.

20 Q. Did you just --

21 A. And I could -- I could not answer Jeff's questions.
22 That's why I forwarded the e-mail over to Bob Kulbeth.

23 Q. Okay.

24 A. Since it was his design, his machine, I wasn't going
25 to answer for Bob on his piece of equipment, so that's

1 why I copied Bob on it, so he responded.

2 Q. Okay. Did you disagree with any of the modifications
3 Jeff is talking about?

4 A. No, I just -- neither did I disagree with Bob's
5 recommendations. Honestly, I didn't care. All I
6 wanted the machine to do was work so I could sell
7 something and prove to customers that I could get
8 their solids dry enough that they didn't have to worry
9 about trucking, so I didn't care about the internal of
10 the machine, how it worked, what it did. I really
11 didn't.

12 Q. Did you ever offer any ideas on the technical details
13 of the working of the machine?

14 A. No. What I did was -- I wanted ease of
15 transportation. This is why I got to have the
16 transport down the road since we are a trucking
17 company ourselves -- well, Macro is. Our parent
18 company's a trucking company. We're going to use
19 Macro's trucks, so I had to make sure that we could
20 haul this thing down the road at least the smallest
21 amount of cost as possible. That was my main
22 concern -- and rig-up time. I wanted to make sure on
23 rig-up time that it was quick and easy to rig up and
24 also to rig down. That was my main concern. But from
25 once -- once it started coming to the machine and

1 A. Whenever I had a call for it, yes. After a while,
2 everybody knew what SandCat was, but initially that's
3 what it was called.

4 Q. Okay.

5 A. This patent -- I think he got a patent on the flow
6 back -- Total Flow Back -- flow -- I'm not sure, but I
7 think he applied for a patent on it.

8 Q. Okay. Did you ever suggest to anyone at DEL that you
9 should be listed on a patent also?

10 A. Yes. Not for the SandCat, it was for the Beast unit
11 and -- because I had a proprietary chemical to use to
12 break down hydrocarbons, okay, and I was going to
13 apply for the patent for that -- that application
14 using the Beast unit -- DEL unit as the mechanism to
15 get it there from Point A to Point B.

16 Q. Did you ever suggest to anybody at DEL that you should
17 be listed as an inventor on a patent on the SandCat?

18 A. No.

19 Q. Did you ever have any discussions with anyone at DEL
20 about Jeff Weber being listed as an inventor on the
21 SandCat?

22 A. No.

23 Q. In your letter of March 12th, 2018, why are you
24 referring to it as the Total Flow Back Clean rather
25 than the SandCat?

1 A. Because that's the name Bob had in his drawings,
2 initial drawings, of the unit, and his patent was on
3 that piece of equipment.

4 Q. Would Bob have known what you were talking about if
5 you had said the SandCat?

6 A. I assume so. I don't know. I can't answer that
7 affirmatively, no. I assume he would after the
8 conversations we had.

9 Q. Okay. Now, the -- is the first job that was performed
10 by a SandCat unit that DEL manufactured, Romac bought
11 and rented to Wildcat, was that XTO?

12 A. Yes, but it -- there was no rent charged for that
13 unit.

14 Q. They wanted to see if it would work or not?

15 A. Correct.

16 Q. And who was operating the machine in the field?

17 A. Wildcat and DEL Tank both were on the job.

18 Q. Okay. Who was -- who from DEL was out there operating
19 the SandCat?

20 A. Jeff was there and numerous other people from DEL -- I
21 mean, from Wildcat. I don't know their names. He had
22 four or five guys out there.

23 MR. NEUNER: I think his
24 question was who from DEL.

25 THE WITNESS: Oh, I'm sorry,

1 signed. I don't remember.

2 Q. Was there a license agreement between DEL and Wildcat
3 at that time period?

4 A. I don't know.

5 Q. Was there ever a license agreement between DEL and
6 Wildcat?

7 A. I don't know.

8 Q. Was there ever a license agreement between Romac and
9 Wildcat?

10 A. Yes.

11 Q. And was that already executed by March of 2018?

12 A. I don't remember.

13 Q. Let me show you what I've marked as Exhibit 11, and
14 Exhibit 11 is an e-mail chain. The first one is from
15 you to -- it's DEL_27657, and the first one's an
16 e-mail from you to Richard, which would be Richard
17 McElligott, right?

18 A. Correct.

19 Q. And it's talking about the XTO job, right?

20 A. Uh-huh. Correct.

21 Q. And that's the first, quote unquote, job, right?

22 A. Correct.

23 Q. Who from Romac was out on the job that is referenced
24 in Exhibit 11?

25 A. I just went out to view the machine running.

1 A. I don't know.

2 Q. How about completions?

3 A. I don't know.

4 Q. Okay. What, to your knowledge, was Mike Kulbeth's
5 experience in completions?

6 A. I don't know.

7 Q. Okay. Are you aware of any confusion among customers
8 about the SandCat, whether it's a DEL SandCat, the
9 Romac SandCat or the Wildcat SandCat?

10 A. No, I'm not aware of any of that.

11 Q. Okay. So tell me how these stickers are stuck on
12 these machines. Is it a peel and stick?

13 A. It's a peeling sticker, yes.

14 Q. How much -- how hard is it to get them off?

15 A. I don't know. I just know over time because of wear
16 they'll start peeling and cracking, but to get it off,
17 I don't know. I don't know.

18 Q. I mean, a wire brush and five minutes?

19 A. I guess. I don't know. I've never attempted it, so I
20 don't really know.

21 Q. In any event, it would not be some massive expense to
22 get these stickers off the machines, would it?

23 A. I wouldn't think so.

24 Q. Okay.

25 MR. JOSEPH: Pass the